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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER HALL QC
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION SKYLINE

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 9 APRIL, 2018

AT 2.00PM

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This transcript has been prepared in accordance with conventions used in the Supreme Court.

THE COMMISSIONER: Mr Chen, just before we resume, what's your estimate? How much longer do you think you might be?

MR CHEN: Five minutes.

THE COMMISSIONER: All right.

10

MR CHEN: Mr Quinlan- - - ?---Yeah.

- - - I'm just going to show you some minutes of a board meeting on 20 July 2016?---Okay.

They're up on the screen now. Do you see those minutes?---Yeah, mate.

And you appear to be recorded as having attended that meeting. Do you see that?---Yeah, I see my name. Yeah.

20

All right. Do you have any – this is the last day that you were, in effect, a board member. Do you remember the last meeting you went to?---No, no I don't, sorry.

I'll just ask you to have a look at the next page, please, which is 253? ---Yeah.

And you'll see there under Point 5, board presentation letters to PKF Lawler?---Yeah.

30

Do you see that?---Yeah.

Do you remember at around this time that the financial records of the Land Council for the 2014/15 financial year were being audited by PKF Lawler?---Yeah, it was. Yeah.

And did you – do you recall that around that time, that the auditors sent the board a number of letters which they requested the board members read, or a particular board member, or members, read and sign?---No, I don't remember.

40

Well, just have a look at the resolution and you'll see that the resolution is that the board representation letters be signed as true and correct. Do you see that?---Yeah, I do.

Do you recall that at all?---No, I don't. Sorry.

Do you have any recollection about what that relates to?---No.

Do you remember being asked to sign a representation letter?---No, I don't. Sorry.

Do you know what a representation letter is?---I believe to represent us as a board or as a Land Council.

You might just keep your voice up for me?---Sorry mate, I'll have a drink.

10 Sure?---Far – I think it's just to represent us as a board or as a whole.

You obviously have no recollection, do you, of seconding the motion moved by Ms Dates?---No, I don't, mate.

Sorry?---No, I don't. Sorry.

Just have a look if you would at this document. Just have a look at this document if you would, please, Mr Quinlan?---Yeah, mate.

20 Do you see it's a letter dated 19 June 2016 addressed to Mr Clayton Hickey at PKF Newcastle?---Yeah.

And if you turn to the second page, please, do you recognise your signature appearing?---Yeah.

On the right hand side?---Yeah.

I take it you read the letter prior to signing it, Mr Quinlan?---Yeah, I must have.

30

And I take it to the extent that matters were raised in the letter that you didn't know about you would have asked questions about?---I don't remember, I don't remember the letter specifically. I don't remember the letter specifically that got sent to them.

Do you recall at all signing this letter?---No, I don't recall but that is my signature, yeah.

Perhaps I'll tender that now, Commissioner, if I can.

40

THE COMMISSIONER: The letter 19 June, 2016 signed by Ms Dates and Mr Quinlan addressed to Clayton Hickey, PKF Newcastle become Exhibit 59.

#EXH-059 – LETTER FROM ALALC DIRECTORS TO CLAYTON HICKEY DATED 19 JUNE 2016

MR CHEN: Mr Quinlan, you did know though didn't you as at this time, that is either June or July, 2016, that Mr Hickey was the auditor?---Yeah, he's been the auditor for a while I think.

And I take it that you would have read the letter prior to signing it would you?---I think I might have but I don't remember.

10 Thinking about what your practice would be if you were asked to sign a management letter such as this - - -?---Yeah.

- - - would you read it?---Yeah, I probably should, I probably did. That's what I mean, I probably did read it but I don't remember.

And if there were matters or issues that you didn't have personal knowledge about would you have asked somebody about those matters?---What do you mean by that?

20 Well, if there was something you came across in the letter for example that asked you a question about whether there had been a particular transaction or a particular event and you didn't know anything about it, would you ask somebody about it?---Yeah, I probably would have.

And who would have been the person or persons you would have asked to satisfy yourself about the content of or the accuracy of this letter?---I don't know. I don't know. I can't answer that.

Would you have asked another board member?---Probably, yeah.

30 You're not sure?---No, but probably.

Now, would you have a look, please, at MFI 18. This will come up on the screen as well, Mr Quinlan.---Yeah.

MFI 18 is a letter to the chairperson of the Land Council from Knightsbridge North Lawyers of 6 March, 2016. Do you see that?---Yeah.

40 And if you turn to the second page you will see that's been signed by the solicitor there.---Yeah.

Have you seen that before, Mr Quinlan?---No, I don't, no, I haven't.

You haven't. Would you have a look, please, at MFI 16 which is a document described as a Briefing Paper on Potential Property Agreements for Board Meeting 8 April, 2016. Do you see that?---Yeah.

Have you ever seen that before, Mr Quinlan?---I can't remember.

Well, see whether the hard copy could be just put in front of you or if you want to have a look at it on the screen you will see it's a number of pages. Are you familiar with it, Mr Green?---Quinlan.

I'm sorry, I apologise.---You called me Mr Green, mate, yeah.

I do apologise, sir.---Yeah.

10 Sorry. Mr Quinlan, have you seen that document before?---No, I can't recall.

Right.---Yeah.

Would you have a look, please, at MFI 17. It's up on the screen and there's probably going to be a hard copy put in front of you as well.---Yeah, I've got one.

20 It's a briefing paper on Advantage Property agreements, it says for board meeting 2 June, 2015, it apparently bears a date 29 May, 2016. Do you see that? It's either on the screen or there might be a hard copy in front of you. ---Yeah, I've got one.

You've got it?---Yeah.

Right. Do you recognise that document, Mr Quinlan?---No, I don't recall.

30 Do you recall at any meeting that you attended ever being provided with any written legal advice or briefing papers from Knightsbridge North Lawyers? ---On this?

I'm sorry?---About this?

At any meeting you attended - - -?---Yeah.

- - - of the board of the Land Council, do you recall being provided with any briefing papers such as the ones that I've showed you?---No, I can't recall.

40 Now, by that do you mean you've got no recollection at all or you've got a recollection and you don't believe one was given?---No, I've got no recollection at all.

Now, Mr Quinlan, were you working at the time you were a board member? ---No, I wasn't.

Were you in employment in the years leading up to you taking an appointment as a board member?---I can't remember if I was working before I got on the board or it was just after.

THE COMMISSIONER: Can't hear you, sorry, I can't hear you?---Sorry. I can't remember if I was on the board when I was still working or if I got laid off.

MR CHEN: I see. What was your occupation prior to being laid off?
---Just sort of a handyman at Awabakal Co-op.

10 I see. Did you complete secondary school, Mr Quinlan?---No, I didn't.

What year did you go to in secondary school?---Year 11, year 11, I completed year 11.

THE COMMISSIONER: What age did you leave school?---I think I done year 11 or year 10 twice, I would have been about 18.

MR CHEN: Thank you, Commissioner, that's the further evidence.

20 THE COMMISSIONER: Yes, Ms Nolan.

THE WITNESS: Do you want this back?

THE COMMISSIONER: Yes, thank you.

MS NOLAN: Mr Quinlan, you've told the Commission that during the time at which you were a board member you were suffering from depression.--- Yeah, I was.

30 And are you still suffering from depression?---It's sort of come back on me now a bit.

And to what extent did your depression effect your ability to remember things during that time?---Pretty much a lot of stuff, even now I don't remember telling him what I've said an hour ago.

So when you've been asked questions with respect to whether or not you recollect things?---Yeah.

40 As you sit there today you really don't remember what went on during this time. Is that right?---At the moment I've got a massive headache, I've - - -

So when you've been sitting here today, you've had a massive headache?--- Yeah.

And does that – do you think that's affected the way in which you've been able to give evidence today?---I don't know, I'm not a doctor, I don't know.

In your own mind do you feel that - - - ?---I've answered the questions to the best of my ability.

Would you say that your depression has undermined your confidence as a person?---Yeah, it has.

10 So when Mr Chen has been asking you questions today where he's been putting a series of ideas to you - - - ?---I felt uncomfortable a couple of times.

You felt uncomfortable a couple of times, have you?---Yes, I have. I don't know whether to say something or not.

Right?---I'm shaking right now, just to let you know.

You're shaking right now, did you say?---Yeah.

20 How would you describe the experience of giving evidence today?---Very nauseous, very – I wouldn't wish it on anybody.

And do you think that's affected the way in which you've been able to give evidence today?---I don't know, it might have, I don't know.

You've been taken to a series of board minutes?---Yeah.

And you've been asked to explain why your name appears as seconding things or moving things?---Yeah.

30 Do you have any reason to doubt the accuracy of the board minutes to which you've been taken?---I don't remember, so I – I don't know what you mean.

Was it your practice to move things or second things as a practice?---A lot of board members do the same thing, too, move stuff and - - -

40 THE COMMISSIONER: I'm finding it very hard to hear you, Mr Quinlan? ---Sorry. Everybody does it, I don't know if that's what – that's the answer you want.

MS NOLAN: So a lot of board members will move things and second things?---They second stuff, yeah.

So you were doing what a lot of board members did, is that what you're saying?---Yeah.

At one point in your evidence you said that you just wanted the land council to move forward. Do you remember saying that?---Yeah, I do.

What did you mean by that?---Just want them to move forward to make it better for everybody to come to board meetings and members meetings so everyone can pretty much all get along again.

So, I think my note says that the reason why you were content or happy or – for KNL Lawyers, so Knightsbridge North Lawyers to come on board, the answer you gave the Commissioner was you just wanted the Land Council to move forward?---Yeah.

10

Why did you think that getting Knightsbridge North Lawyers on board would help the Land Council - - -

MR CHEN: He didn't say that.

MS NOLAN: Well that's what my note says.

MR CHEN: I don't accept that that's what he said. I don't doubt he's given the thrust of that evidence, but I didn't lead it.

20

THE COMMISSIONER: I'll allow the question, we'll sort it out in due course?---Can you say it again, please?

MS NOLAN: Maybe I'll ask the question just to clarify, there's some dispute. I have a note and correct me if you think I'm wrong, okay?---Okay.

That when you were asked why you seconded the motion to have Knightsbridge North Lawyers appointment ratified, that you said you just wanted the Land Council to move forward?---Yeah, because we didn't have a lawyer at the time.

30

When you say you just want the Land Council to move forward - - - ?---Yeah.

- - - you've said that the reason why you wanted it to move forward is because – I'm just shortening it – it was fractured. Is that right?---Yeah, fractured a bit but, yeah, just – just wanted everyone to get along and do the right thing by Land Council.

40

And did you think that doing the right thing by the Land Council was the board members dealing with the issues arising for the board by themselves and working harmoniously together? Is that your view?---Well, that's what normally should have happened but the other board, the other fraction wouldn't come to board meetings at all, so I don't know.

When you say the other fraction, you mean faction?---I – yeah. It – yeah.

Just a slip of the tongue?---Well, no, I don't know, yeah.

And to whom are you referring when you say “the other faction”?---Larry Slee, John Hancock, Debbie and Ellie Swan. I think that was it.

And you've been asked some questions about the appointment of an administrator.---Yeah.

10 Can you tell me why you – what did you think about the appointment of an administrator to the Aboriginal Land Council?---Well, I thought I was doing the right thing by the Land Council, but obviously other people forgot, didn't realise that, didn't think that we was, and they put in a complaint I think to get an administrator in. So that's my take on it.

And did you feel that the Land Council should be able to sort things out amongst itself rather than an administrator coming in?---Well, that's what normally happens, but if you ask me sometimes all a bit, a bit of sour grapes.

20 Who had sour grapes, do you think?---The other fraction.

Do you know why? In your opinion why did they have sour grapes?---One, we got rid of, we, we sacked Steven Slee was one.

THE COMMISSIONER: Sorry, can't hear. What was that?---That we sacked Steven Slee was one of them.

Sorry, say again.---The sacking of Steven Slee.

30 Sacking?---Steven Slee.

Steven Slee.---The CEO. Because he father was on the board. Found out later that Steven Slee's wife was supposedly be related to Debbie and Ellie Swan.

MS NOLAN: And was there another reason why the other members of the board – the other faction, as you've referred to it – had sour grapes, as you put it?---No, I think that was, I think that was about it, as far as I can remember.

40 And what did you do, if anything, to try and bring the board back operating harmoniously?---No, I don't know nothing. I didn't, didn't know, I don't think I did anything.

Do you feel that you may have been able to have done something?---Well, I thought I was friends with them beforehand. But then after, like, then in, I think that friendship went away after that.

You've been asked some questions by the Commissioner with respect to your views on Mr Larry See.---Yeah.

Slee, sorry. And you've said that you respect him.---Yeah.

And then when asked further questions you said, "Well, you know, that's what we do. We respect our elders."---Yes, we do.

10 Am I correct to characterise it this way? And disagree with me if I'm wrong.---Okay.

That it's a very important part of the Aboriginal culture that - - -?---No, it is. It is a very important part.

- - - that you respect your elders no matter what.---Pretty much.

Your view is with respect to them personally, you just respect your elders? ---Yeah. It doesn't matter who they are.

20 THE COMMISSIONER: Sorry?

MS NOLAN: And Larry Slee is your - - -?---Doesn't matter who they are.

And what you personally think about them, it's irrelevant, isn't it? You just respect your elders. That's what Aboriginal culture requires.---No, it is. That's right. Yeah.

30 And that's the case, isn't it, with Larry Slee? It doesn't matter what you think about him personally, you've been taught to and indeed you do respect Larry Slee because he is your elder?---Yeah. Yeah.

Thank you. I have no further questions.

MR PETROULIAS: Mr Quinlan - - -

THE COMMISSIONER: Just before you start. Ms Nolan, you raised before lunch that there were some what you characterise as unfair questions put to this witness. Are you going to deal with those at some stage?

40 MS NOLAN: I've dealt with it to some extent in dealing with the questions that I put to this witness initially, and I think that it's probably the unfairness – I think the Commission now may have an explanation as to some of the matters. I apologise, I'm not going to be able to assist you with the specificity that you've asked of me. The reason being is my notes are not accurate. But the tenor of my objection falls in the fact that this witness has said repeatedly that he was suffering from a mental illness – namely depression – that it was affecting his memory. And on a number of occasions binary propositions have been put in the one question by my

learned friend, saying, “Is that because you don’t really remember or because you don’t think you would have done that?” And this witness’s answer has been, time and time again, “I don’t remember.” So it’s unclear. I’ve done as best as I can to try and assist this witness in getting across to the Commissioner the effect that depression has had on him, how it’s affected his memory. He’s told you he can’t even remember what he said an hour ago. He’s said he’s felt uncomfortable in the witness box. He’s said he’s felt nauseous. That, I hope, might assist you in evaluating his evidence. But I know what you’ve asked of me, and it’s fair that you do, but I can’t
10 assist you to the level of specificity that you’ve required of me, I apologise.

THE COMMISSIONER: Is that last explanation, however, a foundation upon which you asserted that the questions put by Counsel Assisting were unfair?

MS NOLAN: There are a number of – the repetitive with which Mr Chen was approaching his examination today was uncharacteristic in my respectful submission. It was a bit - - -

20 THE COMMISSIONER: Uncharacteristic of what?

MS NOLAN: Of him. He’s normally been a lot slower with people, given them an opportunity to explain. Today I felt with this witness in particular the nuance that is required so that the probity value of the evidence in the circumstances in which this witness is answering questions was being pushed along too rapidly and I didn’t object because I’m entitled at the end of the day to the extent to which it affects my client’s interest to say look, you wouldn’t give those answers much weight for these reasons. I’ve
30 attempted to clarify it as best I can but as I said, I can’t assist you with the specificity that you’ve required of me okay, and it may be unsatisfactory, it may be unsatisfactory and I accept that and I accept that criticism but I don’t withdraw the objection for the reasons I’ve done my best to articulate.

THE COMMISSIONER: Mr Chen, do you want to respond?

MR CHEN: I do, Commissioner. Commissioner, just so my learned friend understands the purpose of me exploring when the witness says I don’t have a recollection, I feel duty bound to press him to see whether the recollection is truly one of I have no memory whatsoever or secondly, to work out
40 whether in fact in truth he is saying that I have a recollection and I do not believe it occurs and I repeatedly did that for the very purpose - - -

THE COMMISSIONER: I understand.

MR CHEN: - - - to explore the distinction which with respect to my friend perhaps may not have been apparent to her.

THE COMMISSIONER: Well, it was apparent to me.

MR CHEN: And, Commissioner, the second point that my learned friend said that I was uncharacteristically rapid and didn't give the witness an opportunity to respond or give an opportunity to explain, I don't accept at all, Commissioner, with great respect. Commissioner, I take it seriously that's it's important for every witness that comes before the Commission that not only they answer my questions but they have an opportunity to answer them fully and completely and, Commissioner, from time to time in the way in which questions are asked of all witnesses there is some talking
10 over and I do my best at all times to ensure that the witnesses are given an opportunity. I certainly don't accept my learned friend's implicit criticism and I don't accept what she put before lunch that I've been unfair.

MS NOLAN: I'll just clarify shall I that I think that you've overlooked what I'm saying. I don't have any difficulty with the proposition that you can challenge witnesses. It's the binary nature of the question that was problematic. That's all I'm saying. When you offer a witness two alternatives and then you get an answer that is I don't recall and that happens time and time again, there lies the devil. I'm not implicitly
20 criticising my friend. If anything I'm saying it's uncharacteristic so in a way I'm actually saying normally it's stellar but today I thought with this witness it's too fast. That's all I'm saying.

THE COMMISSIONER: In the circumstances the evidence of this witness I think I should put on the record my own observations. Ms Nolan, had claimed that Counsel Assisting's questions or at least some of them to this witness were unfair. It is my responsibility to ensure that the proceedings of this Commission are conducted in accordance with proper practice and procedure and that includes the conduct of Counsel Assisting. I closely
30 attended to the questions and the answers given. I can state unreservedly that I am of the opinion no question or questions put by Counsel Assisting of this witness could be said to be in any respect unfair. The questioning on certain matters as Counsel Assisting has just recently stated in response to Ms Nolan's submissions were necessarily undertaken by reason of this witness repeatedly saying he could not recall in order to clarify the basis of that statement. That was proper, indeed it was necessary to adopt that approach. So far as the pace at which questions were put and suchlike matters that have been referred to, there was nothing inordinate at all in the pace. The witness did not demonstrate any difficulty by reason of the speed
40 with which questions were put. The questioning was proper in every respect. All right. Now, Mr Petroulias.

MR PETROULIAS: Mr Quinlan, you remember an occasion you came down to Bexley Hall in a conference centre to talk about United Land Councils and what it was offering?---Yeah.

And you brought Nicky along with it?---Yeah.

You introduced her to myself and a whole range of people?---Yeah.

And the idea was that these professionals would be offered two weeks Land Council to build up some expertise and capability?---I can't remember what it was about but yeah, I know I was at that meeting. Yeah.

So you remember me introduced as one of the legal resources, if you like, to help as, to come into Awabakal?---Yeah, I can't remember.

10

Exactly, okay. Do you remember one professor, for example, had a drone and he was - - - ?---Yeah, he was showing us stuff on that.

And it would scan the land and then provide - - - ?---Yeah.

So there's a range of different professionals that you met that day?---Yeah, I wasn't there long either.

20 Okay. Yeah, that's fine, but you understand that's the context in which I asked you to say that I was in Awabakal, that my job was to be an agent for United Land Councils. Does that accord with your memory?---No, I can't remember.

That's fine. Can the witness be shown MFI 16 and page 6?

THE COMMISSIONER: Can that be brought up on the screen, MFI 16? Sixteen and, did you say?

30 MR PETROULIAS: Page six.

THE COMMISSIONER: Page six.

MR PETROULIAS: See here item 2 where it talks about 20 completed house and land packages and \$20 million? It's about two thirds of the way down, item 2? Do you see that?---What page is that?

Page five?---Yeah.

40 Do you see the 20 houses? Now, does that help you refresh your memory a little bit to say that when you were discussing Nick, what do you think, should we take cash straight up or housing, that it may have come from this document?

MR CHEN: Well I object, Commissioner, partly because it's been put that I've been unfair by asking these questions along these lines, but he's never assented to seeing this document at all and now it's being put - - -

MR PETROULIAS: Does that assist your memory in any way?

THE COMMISSIONER: I'll let the question go through. Have you ever seen this document, or don't you know?---No, I can't remember.

MR PETROULIAS: Okay. Now, Nicole Steadman was taking the minutes during this period?---What meeting was that?

Sorry, minutes of meetings during this period?---Which one?

10 THE COMMISSIONER: Which period are you talking about?

MR PETROULIAS: The middle of 2016?---As far as I think so, she was.

From what you know of Nicole when she takes the minutes, would they be accurate, does she try her best to be accurate?

THE COMMISSIONER: I reject the question?---Well, pretty much if it - - -

20 I reject the question, the answer is deleted. He can't speak for her.

MR PETROULIAS: No, no, but you do have special knowledge of Nicole's work.

THE COMMISSIONER: I've rejected the question so I think it's time to move to the next question?---I don't know what you mean by it anyway.

I have rejected the question.

30 MR PETROULIAS: Now, you were taken to – you remember the formalities when the auditor required that you correct all these minutes and there was a whole series – there was a meeting just to correct minutes? ---Yeah, I think so.

That was just a formality that the auditor wanted? He said these things haven't been – I haven't seen evidence that - - - ?---They've had to pass on them or something.

And you had to do them all again?---I think so.

40 Do you remember when we talked about ratification and you said you didn't know what the word ratification means?---No, I didn't.

But if I said to you, for example, ratification merely means approving what has happened in the past?---Yeah, now, yeah.

Would that make sense to you?---I do, yeah.

So to say, for example, we ratify ABCD, that makes more sense to you?
---Yeah.

Okay. So, you would agree therefore that you would have agreed to
approve what had happened in the past?

10 MR CHEN: I object, Commissioner, in part because, again, this witness in
particular respect has said he has no recollection at all about these particular
matters, but if there's a specific proposition in relation to one or other, there
was a series of meetings involving ratification, he should put it.

MR PETROULIAS: Certainly. Let's have volume 10, page 101. So,
Lenny, say for example number 3, at the bottom it says there is a letter
apparently that has been written and it says that Kelvin Kenney was
appointed. Do you remember that?---Yeah, I don't remember, I don't
remember when, the date, but I remember Kelvin Kenney was, yeah.

20 Yeah. And his job was to find a series of problems with management.
---Okay.

MR CHEN: Well, I object, Commissioner. I mean I don't think his job was
to find any problems, his job was to investigate, that's what the order of
appointment says.

THE COMMISSIONER: I think if you just - - -

MR PETROULIAS: Well, corporate governance.

30 THE COMMISSIONER: I think if you just limit it to the fact that he was
engaged to investigate, that's all.

MR PETROULIAS: Yeah, engaged to investigate. And in the course of
that he raised things that could be fixed.---Well, I can't remember.

You can't remember?---No.

40 So can you remember for example that's simply saying that we're fixing the
things that we did in the past, we approved the things that weren't approved
properly?

MR CHEN: Well, Commissioner, I object. Commissioner, I asked him
specifically the questions directed to this topic about whether or not, in non-
leading form, about these very topics and the witness has said he cannot
remember.---Yeah.

MR PETROULIAS: Because he didn't understand the word ratification.

MR CHEN: No, I haven't, my questions were never limited in such a way, Commissioner, about it was specifically asking him whether he had a recollection of being involved in the decisions.

THE COMMISSIONER: Mr Petroulias, he gave that answer both in relation to the ratification point but beyond that in relation to the matter you're now asking about. Perhaps you could approach it in another way.

10 MR PETROULIAS: Okay. Can I put it a little bit more generally. Now, so if for example someone says to you, Lenny, this was done without authority of a board because there was no board, as an example, and I say to you a ratification is to approve something, do you understand the word ratification to mean approve what had happened?

MR CHEN: Commissioner, I object.

MR PETROULIAS: I'm not asking the specific, this is just, just the word ratification.

20 THE COMMISSIONER: Mr Chen, I'll allow the question and see where we go.

THE WITNESS: No, I understand what it means now you explained it.

MR PETROULIAS: Right. So if someone – okay, that's all I need to – thank you very much.

THE COMMISSIONER: Mr Chen, anything further?

30 MR CHEN: No, there's not, Commissioner.

THE COMMISSIONER: All right. Thank you, Mr Quinlan. You may step down, you're excused.---Thank you, sir.

Thank you. My associate will take that document. Yes, very well. Yes, Mr Quinlan. As I understand you want to shake hands as a sign of respect.

THE WITNESS: Thanks, sir, really appreciate it.

40 THE COMMISSIONER: Thank you.

THE WITNESS: Sorry if I didn't answer the questions.

THE COMMISSIONER: No, that's fine. Thank you.

THE WITNESS: Thank you.

THE WITNESS EXCUSED

[2.43pm]

THE COMMISSIONER: Now, the next witness?

MS CURTIN: This is Mr Raymond Kelly, Commissioner.

10 THE COMMISSIONER: Thank you. It's Mr Kelly, is it? Yes, come forward, Mr Kelly, just stand there for a moment. Do you mind stating your full name?

MR KELLY: Raymond Frederick Kelly.

THE COMMISSIONER: Thank you. Mr Kelly, do you take an oath to give evidence or do you want to give evidence on an affirmation?

MR KELLY: No, I'm happy to take an oath.

THE COMMISSIONER: Thank you.

THE COMMISSIONER: Just take a seat, Mr Kelly.

MR PATTERSON: Thank you, Commissioner. My name is Patterson and I have the Commissioner's leave to represent Mr Kelly.

THE COMMISSIONER: Yes, Mr Patterson, I grant leave.

10

MR PATTERSON: Thank you, thank you, Commissioner.

THE COMMISSIONER: Mr Patterson, does your client want to give evidence on objection or not?

MR PATTERSON: He wishes you to make the section 38 declaration.

20

THE COMMISSIONER: Thank you. Mr Kelly through his legal representative, Mr Patterson, has indicated that he wishes to give evidence on objection. Accordingly pursuant to Section 38 of the Independent Commission Against Corruption Act, I declare all answers given by him and all documents and things that may be produced to him during the course of his evidence are to be regarded as having been given or produced on objection. Accordingly, there is no need for Mr Kelly to make individual objection to particular questions, answers, documents or things produced.

30

MR KELLY THROUGH HIS LEGAL REPRESENTATIVE, MR PATTERSON, HAS INDICATED THAT HE WISHES TO GIVE EVIDENCE ON OBJECTION. ACCORDINGLY PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE ALL ANSWERS GIVEN BY HIM AND ALL DOCUMENTS AND THINGS THAT MAY BE PRODUCED TO HIM DURING THE COURSE OF HIS EVIDENCE ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION. ACCORDINGLY, THERE IS NO NEED FOR MR KELLY TO MAKE INDIVIDUAL OBJECTION TO PARTICULAR QUESTIONS, ANSWERS, DOCUMENTS OR THINGS PRODUCED.

40

THE COMMISSIONER: Yes.

MS CURTIN: Mr Kelly, are you currently employed?---I am.

What is your current occupation?---I am an academic researcher at the University of Newcastle.

How long have you held that position?---Perhaps two years.

You are a member of the Awabakal Local Aboriginal Land Council. Is that right?---Correct.

How long have you been a member?---Since its inception, perhaps 1983.

You've also served as a board member of the Land Council. Is that right?
---On numerous occasions over the years.

10

When was the most recent period?---Prior to the removal from office, it will be the introduction of the administrator in this period, so I can't recall the period just at the moment.

Would it be correct to say that you were elected as a board member on 20 July 2016?---2016.

And served in that capacity until the administrator was appointed on 13 October?---Correct.

20

Mr Kelly, do you remember a member's meeting held on 29 June 2016?---I believe so.

Did you attend that meeting?---I did.

It was held at the Islington Baptist Church Hall. Is that right?---It was.

Was that the first member's meeting that had been held in some time?---I believe it was.

30

Do you recall a person by the name of Despina Bakis being in attendance?
---I do.

What about a person by the name of Nick, was he also there?---Nick was there, yeah.

At the time, you weren't aware of his surname but you now know who that person is?---I do.

40

Who do you now know Nick to be?---I know him as Nick Petroulias.

And is he in the hearing room today?---He is indeed.

Had you met either Ms Bakis or Mr Petroulias before that member's meeting?---No, I hadn't.

Can you recall who introduced them at the meeting?---I believe it was Richard Green.

And do you recall what Mr Green said about either of them?

MS NOLAN: I'm going to object because my friend keeps using the word members' meeting but I think she actually means to refer to a board meeting, I don't - - -

THE COMMISSIONER: We're talking about a board meeting.

MS NOLAN: It's a members' meeting, sorry.

10

THE COMMISSIONER: Continue.

MS CURTIN: Do you recall what Mr Green said about either Ms Bakis or Mr Green when he introduced them?---I think it went something along the lines of they were going to introduce a proposal about a development.

In what capacity did you understand Ms Bakis to be in attendance at the meeting?---I understood that she was the bookkeeper at the time.

20 What formed that understanding? Was it something someone said?---I think she was going to present some financial reports.

You said a moment earlier that Mr Green introduced them. Was it Mr Green that told the members that Ms Bakis was the bookkeeper?---Yes. That's correct.

What about Mr Petroulias? In what capacity did you understand that Mr Petroulias was at the meeting?---I understood that he worked for Mrs Bakis.

30 Can you tell the Commission what it was that lead you to form that understanding?---I think the fact that he walked in with a carry suitcase, I think he presented some – he presented as if – and I'm going on my recollections here, I think he presented as if he was a lawyer working for Mrs Bakis' company.

Can you tell the Commission as best as you can what words Mr Green used to introduce Mr Petroulias?---I think that he said that they were the – the – the land council's lawyers.

40 When you say they, you mean?---Both he and Mrs Bakis but I understood that her company was still the audit firm or the bookkeeping firm.

And so you also understood by what Mr Green told the members at the meeting that Ms Bakis and Mr Petroulias were there together?---Indeed.

Representing - - -?---The interest - - -

- - - Knightsbridge North Lawyers?---Yes, for Knightsbridge Lawyers but also I think acting as the Land Council's lawyers as well.

Mr Kelly, did you have an expectation about what would be discussed at the members' meeting on 29 June, 2015?---Indeed. Look, the, there'd been a lack of meetings for quite a number of months. People were, people were anxious to hear about the, the state of the Land Council. Certainly I and a number of others were asking questions about financial reporting, about the financial position of the Land Council and we were very concerned that, we
10 were very concerned that there may be some trouble but we couldn't actually get any, any reasonable responses from, from members of the, from, from the leadership of the Land Council.

Sorry, did you expect that at that meeting the Land Council's accounts would be presented to the members?---Absolutely.

And were they presented?---Not in a form that I was satisfied with.

Did you say anything about that - - -?---I did.
20

- - - at the meeting?---I did and I've raised that issue on numerous occasions since then that there is, there's been a failure to provide members with a true and accurate position of the financial position for the Land Council.

Well, just dealing with the meeting at present.---Ah hmm.

What was it to the best of your recollection that you said at the meeting about the accounts?---I'm sorry, I'm just at sea at the moment.

That's all right, but your evidence is that you did raise the question of the accounts - - -?---I did.
30

- - - at the meeting?---I did.

And what, you asked whether they could be presented to the members?---I was, I, yes, I would have asked that a financial position be presented to the Land Council, yeah, to the membership.

And what response did you get at that meeting?---I think we got some, I
40 think we got some tap dancing around the, the issue and failure to provide any, any offering of the, the financials to the membership at all.

Can you recall who would have given that response if any?---No. I think there was a fair bit of fobbing off going on around the room.

Sorry, so when you said to the Commission that you asked about the presentation of the accounts, to whom did you direct that question?---I may have directed it to the chairperson, the person who was acting as the chair.

And who was that?---That was Richard Green at the time.

And when you referred to the fair amount of tap dancing or fobbing off that was given by way of response, was that Mr Green?---Certainly Mr Green and by that stage he'd introduced Mr Petroulias or Ms Bakis who had introduced Mr Petroulias and we, we really, we had a real difficulty in getting any adequate answers.

10 And aside from the question of accounts do you recall any other matters being discussed at this meeting?---There were, there was a great deal of anxiety happening because there were other people that were, that were clearly situated in the room who were I believe a part of a, part of the, forming part of a presentation about a land deal and they were sitting in the room and I, I kind of figured that that was something else that was going on at, during that meeting as well.

So do you mean people who perhaps were representing a company by the name of Advantage?---I think so, yes.

20

Well, I'll come to that but if I could just ask you first whether you recall any discussion of the legal matters that were before the council at that meeting? ---In terms of the, the prospect of an administrator being, was it an administrator.

So by this stage, by 29 June proceedings have been commenced against the Registrar and the Minister and the New South Wales Aboriginal Land Council.---That's right. That's right. Who, sorry.

30 Those proceedings have been commenced by summons just two days previously on 27 June.---That's right. That's right.

Do you recall those proceedings being mentioned by anybody at the meeting?---I think Nick Petroulias, who I had only known by Nick at that stage, had indicated that there were, there was, there were legal proceedings underfoot. I think I raised the issue about the, the amount of money that it was going to cost us.

40 So Mr Kelly, what would you have said?---"Can you," well first, "Can you tell us what, what money do we have left? What will it cost us to, what will it cost us to, to mount this challenge against the Minister." And I think, I think I have, I remember the response.

Yes, what was the response? This is Mr Petroulias?---From Mr Petroulias and I, I think, I think the response was that, "We needn't worry about the, the amount of money because we'll get it returned from the Minister. She'll pay the cost." To some, something to that effect.

"We needn't worry about the money because we'll get that back from the Minister."---Correct.

"She'll pay the costs."---Correct.

So what did you understand that to mean?---That they felt that they were comfortable in, in winning a judgement against the, the Minister for Aboriginal Affairs.

10 And in the event that the Land Council did win that the costs would be recouped from the Minister?---Well, all costs would be recouped, yes.

I'll just take you – if I may – to the minutes of this meeting which are at exhibit 55. Do you recognise those? Those are the minutes of the meeting of the Awabakal Local Aboriginal Land Council on June 29. Do you see that Mr Kelly?---Yes. Yes, I do.

20 Can we just go down to the next page, please, and about a quarter of the way down the page, point two is the discussion of legal matters before the council.---Point two?

Yes. Discussion of legal matters before the council and you'll see there you're mentioned.---Yes.

"Ray Kelly asked several questions regarding the presentation of the accounts."--- Ah hmm.

30 We've dealt with that, and then just further down it says, "The chair rejected the notion of invitation of lawyers to speak on matters of technical expertise."---Mmm.

Do you know what that means, Mr Kelly?---I couldn't venture - - -

Right. And then further down it says, "The chair propose that to avoid unnecessary conflict, the meeting being now closed will proceed as an information session," et cetera.---Yep.

40 So do you recall that at about that stage that the meeting was in fact closed? ---That's right.

Can you tell the Commission what happened around this point in the meeting?---Well, I, I believe that, I believe that things had begun to be heated because there wasn't any – the board was not forthcoming with financial reporting, couldn't give any clear and concise answers as to their, their actions, had in fact had the lawyers doing all the speaking in the room and I think that people just lost faith in them.

And, sorry, and when you say lost faith in them, do you mean?---In the faith of the board to lead, lead us through the, the evening.

It says there the meeting now being closed would proceed simply as an information session and it also mentions in the next line down that other matters regarding the Land Council would be discussed. Do you see that? So it mentions the legal proceedings and then, "And other matters regarding the Land Council."---Sorry? Oh okay, yes.

10 Yes. Can you recall what those other matters were?---I think they, they wanted to go on and talk about the, about the land dealings.

Yes. And you, you said earlier, your evidence was that there were some people there from Advantage.---They, they were there.

How did you know that those people – well firstly, could you tell the Commission, who they were?---I think Richard, Mr Green had introduced, well, had indicated that he might at some point introduce the, the visitors in to the meeting.

20

Are you able to say how many visitors there were?---I think there were probably, at, at the very least there were two.

At least two?---At – at the very - - -

Were they identified by name?---Not at that stage.

At any point during the meeting were they identified?---I couldn't honestly say.

30

How did you know that they were there to address the meeting? Was that something that Mr Green said?---I think it was on the indication of Mr Green, yes.

What else did Mr Green say about this, either the company advantage or the proposal itself?---I don't recollect.

40

So, what can you recall about what was said about Advantage at that meeting?---I think there was a great deal of bluster around the room about what was potentially on offer. I think that there was a great deal of anxiety from board – from members not receiving adequate notification and reporting, and I think the – I think that this meeting deteriorated to the point that people began to get up and leave, and I think I was one of them.

Prior to you leaving, did you glean that there was anything amounting to a proposal?---I felt there was a proposal being suggested, absolutely.

On behalf of Advantage?---I believe so, yes.

Do you understand what the nature of the proposal was in general terms?---I couldn't say, but I understood that it was going to be raised.

Was it to do with the Land Council's Land? Did you understand that much?---Indeed, indeed.

Yes?---Yeah.

10 And the sale of that land?---At least the sale of some of it, yeah.

Right. But your evidence was that you left the meeting?---I did.

Before you heard any in-depth discussion of that proposal?---Yes.

Did you hear anything further, Mr Kelly, about the proposal concerning Advantage after the meeting?---After the meeting, yes. A number of people who had left the meeting had joined together across the – in the park to have a conversation about the failure of that meeting.

20

Sorry, was that Mr Green that suggested that?---No, no, no, this is a number of people who left the room, who went across the road and decided to have a private conversation amongst those members to talk about that failure of that meeting. So, we were talking about the lack of leadership, there were a number of people who were talking about the proposals being on offer and somebody may have mentioned Advantage by that stage.

And just taking you back to the point, sorry, before you left the meeting, did Mr Green say anything about how the rest of the meeting was to proceed?---
30 In terms of a conversation?

Yes, about Advantage?---I understood that they were only going to have an open conversation about it.

An open conversation?---I didn't believe that it was, in fact, a continuing meeting, I thought the meeting had closed.

But there was to be, after the meeting had closed, an open conversation- - -
40 ?---An information session.

About?---The proposal. Yes, about the proposal.

And you then went over across the road to the park?---With a number of the other people, yeah.

Okay. And after that day did you hear anything further about the proposal concerning Advantage?---I may have heard something about it through the –

through the period of time from that meeting to my being on the board or at least through the process of being on the board.

Did you have any further contact with Mr Petroulias?---I – I had a telephone conversation from Mr Petroulias on the Sunday prior to the member's and AGN meeting.

So around about 16 July, does that sound right?---That sounds about right, yes.

10

Did you consider it unusual to have received a telephone call from Mr Petroulias?---Absolutely, I thought it was very forward.

Did you know how he came to have your telephone number?---I had no idea how he came to have my telephone number.

You had never met him before the member's meeting?---I had never met him before, no.

20

Do you know how he received your telephone number?---No, I don't.

What did he say to you during the telephone call?---He introduced himself as Nick Petroulias, had made some comment about the failure of the meeting but that there is, in fact, was a plan, was a good plan, it would be good for the Land Council, we would – it would be a good outcome for the Land Council in terms of the land deal.

Sorry, just stopping you there for a moment. When you say that there was a plan or that Mr Petroulias said there was a plan - - - ?---Yeah.

30

- - - did he say by reference to a particular company?---It may have been the – it may have been the Advantage movement.

All right?---If it's continuing from the conversation that we had, but I'm just going to try to go to exact words on that conversation on that day.

Yes.---And I can't, I would need time to think about whether or not that was those exact words about Advantage. I'm pretty confident it would have been about that.

40

Yeah.---About that deal.

Because he didn't, to the best of your recollection he didn't mention any other proposal - - -?---No.

- - - or any other company?---No, no.

So he told you in the telephone call that this was a good plan?---And it would bring benefits to the Land Council membership.

Can you recall him saying anything else about the details?---Yes. He said something else that I thought was pretty bizarre.

10 Yes?---And that, that he felt that or he'd understood that I'd had a fallout or had a difficult relationship with the chairperson at the time, Debbie Dates, and that I needn't worry about her because she's not really the linchpin in – these are my words – the linchpin in the, in the scheme of things.

Okay. And did you respond to that?---I probably let it slide. I'm kind of, by that stage my receptors were up, I was thinking, well, this guy's really playing, trying to play me along, and so I, you know, I said, said my goodbyes and indicated that I might call him at some point, but I didn't.

20 Sorry, just before we leave the telephone call, did he discuss the proceedings against the Minister that the Land Council had during that telephone call?---He may have indicated it, I couldn't, couldn't say from memory now.

Okay. And so what did you do after finishing the telephone call with Mr Petroulias?---Considering the conversation that a number of us had had prior to the last failure of the last meeting, I rang Sean Gordon and had indicated to Sean Gordon, who is also a member of the Land Council, that I'd just received a phone call from Nick Petroulias and he said funnily enough that he had also received one and together we thought that was a bit, a bit, yeah, a bit, it much of a coincidence.

30 Yes. And sorry, just to take you back to the phone call before we leave this topic, you said using your words that Mr Petroulias said something about Ms Dates not being the linchpin at the Land Council?---Yeah, I, yeah.

40 Can you give a better approximation of what he may have said, what words Mr Petroulias used or what he meant?---I can tell you what I think, what I thought, what I took from it what he meant is that she actually, she is not the major player in the, in the, in the, in the procedures, in the, in the proposal, that she could quite easily have been taken out of the system if, if that was the issue.

Did you think that he was intimating something about who was in control of the - - -?---I am certainly absolutely sure that that's what he was saying.

There was another members' meeting on 20 July, 2016. Did you attend that meeting?---20 July? Is that a members' - - -

It was a members' meeting.---Ah hmm.

It was held at the Croatian Club.---Ah, yes indeed.

You recall attending that meeting?---I did.

And was Ms Bakis in attendance?---She was.

And was Mr Petroulias also there?---He was.

10 Did you consider that to be unusual that they were there?---Certainly, because, because of the fallout of the last meeting I would have thought that if, if people were going to conduct business they probably should be fixing up, you know, trying to make some sense out of the failure of the last meeting, but I also realised that that was the same night as the AGM, so again I'm thinking, well, strategically there's something underfoot. So I kind of saw them there and wondered why they were there.

20 Did you say anything about your concerns?---Certainly, and I think I raised a motion to suggest that they shouldn't actually be in the room. Again I felt there was a conflict of interest considering that they were both in from the same company. I made some comment about the financial reporting and I think I may have spoken to Despina directly about this and said something to the effect of, I think there's a conflict of interest, how, how can you be our bookkeeper/financial controller or our lawyer if ever we've got any issues to deal with in terms of, you know, improper, improper financial management these – again I'm stretching this a bit, but this is what I meant – then you'd be in conflict with yourself because you're going to represent the Land Council and defend that position by also, by you know, tallying the dollars and cents, if you like.

30 So is it correct to say you had an objection to Ms Bakis being at the meeting but also to the capacity in which she was acting for the Land Council?
---Absolutely.

In that she was acting both as the bookkeeper and as you understood it as the council's lawyer?---As well, as well having another lawyer from her firm. That's my understanding at that time, that Nick was another lawyer from her firm and he was also acting in some capacity which I wasn't quite sure of up until that point.

40 So the objection you had was to in fact both of them?---I wanted, I wanted to understand the roles. I wanted to understand their responsibilities. I wanted to understand the separations of power and I wanted to, I wanted, I wanted us as the members to be in control of those decisions and I felt we weren't.

You said that had wanted it noted, your objection noted.---I did.

If I could just take you to the minutes of that meeting which are Exhibit 56. On the first page there, these are the minutes of the ordinary members' meeting on 20 July.---Ah hmm.

And if you see down the bottom of that page it says, "Raymond Kelly wants it noted that he rejects the solicitor being here." So from what you've told the Commissioner in fact your objection was a bit broader than that. Is that right?---Yes.

10 It wasn't simply that you rejected – it doesn't say who the solicitor is for one thing. Do you know whether that was meant to be an objection to Mr Petroulias or Ms Bakis or - - -?---It would have been, it would have been both of them.

Right.---Unfortunately the minute taker hasn't fully captured the, the content of the room but I mean it was a very lively affair so I wouldn't be surprised that some things were missed. But, you know, I mean it's, it's a bizarre, it's a bizarre motion to welcome the legal team. Where's the motion, you know, there isn't an indication from my reading of that that
20 people were in fact appointed. I couldn't understand the relationship so for me it's, for me it's that they should get out and we should deal with stuff and we should then maybe make some sense of what has transpired in terms of the board meeting, if there is something that's happened. How are they our legal team. What is their background. What is their credibility and we didn't, obviously we didn't get to deal with that.

THE COMMISSIONER: Did you say anything in relation to your proposition that you rejected the solicitors being there or a solicitor being there?---Sorry, Commissioner?

30 You will see on the screen there it says, "Raymond Kelly wants it noted that he rejects the solicitor being here."---Ah hmm.

Did you elaborate upon the basis for that?---I would have, that's entirely the content of what I'm saying here today is what I would have mouthed on that night.

When you say you would have, do you have a recollection as to the essence of - - -?---Sorry, I did.

40 You did.---I mouthed that on that night.

So the explanation that you gave was in line with the explanation you've already given here?---Yes.

Thank you.

MS CURTIN: And, Mr Kelly, you said earlier that you did raise your concern specifically with Ms Bakis at this meeting?---We were, we were in direct communication, yes.

And she gave you a response didn't she?---She, her indication was that as lawyers or a legal, or a legal firm that they have ways of dealing with that which I took to be a, I took it that she was fobbing me off.

10 So she said something to the effect of as a company we have ways of - - -?
---Of dealing with those conflicts of interest.

And what did you understand that she meant? I know you just said that you thought she was fobbing you off, but what did you understand giving her the benefit of the doubt that she meant by that?---Well, I couldn't understand. I mean I'm not a lawyer so I don't profess to, to understand the, you know, the operations of a, of a legal firm but I - - -

20 Well, did she offer any further explanation other than saying that?---No, no, no, she didn't. No, no, she didn't and that's what I was concerned about.

Yes?---You can't just give me a position and say that's what it is, without answers, without some substance.

And no further explanation was forthcoming?---None whatsoever.

30 Were you aware of anyone else working for either Ms Bakis' tax company or her law firm?---I understood that Nick was employed by her. He made the comment that I actually work for - either he called it Despina or Ms Bakis.

He said that at the meeting, did he?---He said that at the meeting, yes.

He said that he worked for Ms Bakis at Knightsbridge North Lawyers?
---Yes. Now - - -

Did he say that to you or did he say that to - - - ?---He said that to the membership but just to be clear, he may have said that in a meeting prior or he may have said it at this meeting, so it is a bit of a while ago.

40 So either at the member's meeting on 29 June or 20 July?---There was certainly that statement made by Nick.

And not just to you but to the members at the board meeting?---No, to the membership.

Now if we just go back to those minutes, please, Exhibit 56, if we go please to the second page of those minutes, at point 5 it says Nick (solicitor)

explained the update of the litigation against the Aboriginal Affairs Minister and the Registrar?---Yeah. I can read that.

Are you able to recall now what was said by way of update?---I couldn't be – I can only give you a general feeling about what I think was being translated to us and that is that there was a legal move to deal with the Aboriginal Affairs Minister and the Registrar, and I wasn't aware of the trouble started from – and they did indicate that the whole process out of litigation against the – sorry, of the impending move by the Aboriginal
10 Affairs Minister and the Registrar had started from a nuisance complaint. I recall that.

Do you mean that the prospect of the Minister appointing an administrator? ---That's right, yes. And they did indicate that it was one member. Now, everybody was very clear about who that person was even though there was no mention of this name. We knew who people were inferring.

Who was that?---Mr Larry Slee.

20 Right?---That was the inference from that room that I took.

THE COMMISSIONER: Mr Kelly, at this time, this is fairly significant litigation being brought against both the State Minister for Aboriginal Affairs and the Registrar?---Mmm.

Was there any explanation in the update that Mr Petroulias is said to have given as to what this was all about and what was the contents of the update of this discussion?---Again, there's been a failure, Commissioner, to adequately give essence to what's been said. Warm and fluffy, you know, eloquence and language doesn't mean anything to me unless you can
30 actually physically show me something, and so I, like a lot of people, were saying just show us some finances, just give us some detail, you know? Oh, we've got this under foot, we're going to bring – we'll get a barrister, whatever, whatever, but a lot of that doesn't mean anything to Aboriginal people. We want to see facts and figures, we want to see the detail and unfortunately what was forthcoming from this end was this bravado that things are going to be fixed and unfortunately, we didn't believe it.

40 Do I understand your interest in getting the accounts, proper accounts, was to determine issues of financial affairs that were caught up in this litigation against the Minister and the Registrar, or not?---To some degree that may have – there may be some consequence there in terms of ongoing with the Minister and with the legal challenge against the Minister and the Registrar, but in truth, we're talking about a fairly substantial period of time that we're looking for financial reporting, and we have no idea. Now, we, we, we're, many of the members are aware of the, the financial position that the organisation had been on two previous sales through the Land Council. One for a property at Scott Street in, in, sorry, in Newcastle, which sold for

somewhere in the vicinity of \$2 million, and the recent or the most recent sale of a property at Olney Street, which we were never fully made aware of in terms of its, its sale. But essentially we're talking probably, you know, closer to, closer to \$3 million worth of income that had come from the sale of land, and we've had no adequate reporting against that, against that. And our fear is that something is underfoot, but as members we have a right to be told what is the financial position of the organisation. So that's our line of, that's our line of inquiry, and we're being told that you know, that all of that will be revealed in time. But as members we have, we have a, we have a
10 right to be told exactly what the day-to-day affairs of the organisation and what is the financial position of the organisation. Above all else, those, those are provisions that are made in the Act, and we as Aboriginal people – in terms of our own self-leadership – we have a right to know that.

MS CURTIN: Mr Kelly, I take it from what you've told the Commissioner moments earlier that at this meeting, on 20 July, there was no clear articulation of what the objective of the proceedings against the Minister was.---I don't feel that it was adequately explained if, in fact, they had a position, but that may have been a consequence of the uproar in the room.
20

And what about the prospects of success? Was that explained to members? ---I, I, I don't think, I don't think it was, I don't think you could act, you can, you can honestly say that you're, that you have any chance of success. My experience is that sometimes you win and sometimes you lose.

Yes. But as far as an explanation was proffered, if at all, you can't recall one being given about the prospects of success?---I actually, I think, I think the legal team were pushed to the point of saying what is the, what is the chance of success. And I think we actually got them to the point where they could say, well, it won't matter if you didn't succeed because at least you've tried. Something to that effect.
30

And when you say "the legal team" you mean either one or both of Ms Bakis and Mr Petroulias.---I think it was, I think it was probably Nick by that stage.

And what about costs? Was that given in any detail? Any explanation of what it might cost?---There was never any, never any indication of costs other than we'd have it recouped.
40

And were you aware at this point, Mr Kelly, that mutual undertakings had been provided by the Minister on behalf of the Land Council in connection with these proceedings?---Yes, I was by that stage, yes.

Had that been discussed at the meeting, had it?---I don't know that it was actually, I don't know that it was actually discussed as an agenda item, but certainly a number of people in the room were talking about it.

Do you know what the content of the undertaking was that the Land Council had given?---The, the, the leadership of the Land Council?

Well, the Land Council in the proceedings against the Minister, you understand, had given an undertaking in connection with those proceedings to the Minister.---We weren't fully aware of what was being, what that line of defence was, no.

10 You weren't aware what the undertaking was that had been given by the Land Council?---Not clearly, no.

You can't recall it being explained to members?---No.

Before we leave that meeting, was any discussion had about the property proposal that had been touched upon at the earlier meeting on 29 June?
---Yes, I think there was, we were moving into that line of inquiry.

20 Did Mr Petroulias give some explanation about, and I'm talking about the Advantage Property proposal, at this meeting?---I think he was beginning to do that, yes. He would have – again, can I just give you an explanation of the evening, of the space in which we were conducting this affair?

THE COMMISSIONER: Yes, you go ahead.---I've been a member of the Land Council since 1983. Aboriginal people hold guard their affairs very private and the exposure to what's happening with, with, with us in this instance and elsewhere is very disheartening.

30 MR CURTIN: Yes.---We were taken along to a – we were called to a general meeting and an AGM in an open space where any number of members from that Croatian Club were sitting in that space. They were listening to the affairs, they were listening to the bickering and the, and the, and the challenges that we were having as a membership and I felt very embarrassed by that because I've worked alongside some very important honourable esteemed Aboriginal leaders who are no longer with us who fought very hard for these gains that we have today and I feel that we're, we're, we're, we're throwing it away and I – sorry, I lost myself there for a second.

40 No, I understand.---But it's what drives not just me but quite a number of the members when we, when we fight for, when we fight for these hard, hard-fought gains, we want to protect them, not to hold them as treasures but to protect them so that they can be of use for our future generation of, of community. And unfortunately I think that what's happened here is there's been a real failure to show leadership, there's been a real failure to communicate about the honesty and with honesty and sincerity about the affairs of the Land Council, we've had a Land Council in absolute disarray and, and now we have a community feeling the same effects on a much broader level.

Can I take two points from what you've just said, Mr Kelly. The first is that holding both the ordinary members' meeting and the AGM at the Croatian Club was very unusual as far as your experience goes?---Yeah, it is, and I still think it was very improper to do it.

Because it was a public space and not restricted to members only?---That's right.

10 And second, that although Mr Petroulias may have attempted to talk about the property proposal with Advantage at that meeting, there was a significant level of agitation amongst the members at the meeting, such that he was unable to - - -?---That's right.

- - - as best as you can recall, get very far in that discussion - - -?---That's right.

- - - before members left the meeting. Is that right?---No. We still had the, we still had the AGM to deal with.

20

Right?---But I think, I think the, that side, that aspect of the, the meeting had, people had seen the writing on the wall and had decided to leave, so at some point I think that they called an end to the AGM, to the general meeting - - -

Yes?--- - - - and so people were then making their way out.

30 Did Mr Petroulias approach you after the members' meeting before the annual general meeting?---In fact Ms Bakis first approached me, she was agitated, she was crying and she, she was very upset, and she approached me and, and I was standing with my wife and she said something to the effect that she was, she was upset and she had felt I'd defamed her.

Yes.---And at that point Nick also joined the conversation and I think his, his demeanour was a little heightened as well, he was certainly obviously, he, he showed agitation to me and at that point I called for the security guard and asked that they be removed because I didn't want to communicate with them.

40 So you didn't have any conversation of any substance with Mr Petroulias - - -?---None whatsoever, no.

- - - individually? And you said then that the annual general meeting was held.---Yes.

And it was at that meeting that you were elected as a board member?
---I was.

Do you recall whether the annual report for the Land Council was approved at that meeting?---I'm, I'm not sure that it could have been adequately approved because I don't think the financial affairs or the organisation were in fact in order. We may have been able to approve it you know, subject to finances being approved.

10 Do you recall a copy of the annual report being tabled or given to members?---I recall – I do recall aspects – yes, I do think there was, in fact, a copy provided. I'm going to a conversation, I'm thinking about some of the things that were being expressed in that meeting and there was a line of questions by Sean Gordon that said something about this – these – there are two sets of minutes or something, so I don't know.

Okay. If it assists, I can show you, Mr Kelly, the minutes for the annual general meeting. If Mr Kelly can be shown Volume 1 of 1, Ray Kelly. It's a bundle of documents. I tender this bundle of documents, Commissioner, it's simply called Public Inquiry Hearing, Brief Volume 1 of 1, Ray Kelly.

20 THE COMMISSIONER: Yes, okay.

MS CURTIN: And you'll see the first document in that bundle, Mr Kelly, is - - -

THE COMMISSIONER: I'll just mark it. It's Volume 1 of 1, Ray Kelly, it will become Exhibit 60, 6-0. Yes.

#EXH-060 – DOCUMENTS FOR RAY KELLY

30 MS CURTIN: Thank you, Commissioner. Sorry Mr Kelly, you will see that the first document in that bundle is the minutes of the annual general meeting on 20 July 2016, and I just wanted to take you to the second page of those minutes, point 6 on that page. The second page, Commissioner, of that document. It's a motion which reads those who want to approve the annual report. You'll see it's been moved by Sean Gordon. Do you see that, Mr Kelly?---Yes.

40 And it's difficult to see but it looks like the report was approved and carried, yes, 34 votes for, five votes against?---Yes.

Mr Kelly, do you know if you have a copy of that report in your records? ---I'm not sure. I may have, may have.

And if you do have a copy would you be able to provide that to the Commission?---Yes, I can.

Your first board member meeting was on 28 July 2016. Do you remember that?---Yes, I do.

Now, do you recall in that meeting moving a motion to have Mr Petroulias removed as a solicitor of the Land Council?---I probably think that I moved that the legal firm be removed.

So your recollection is that you moved for the firm itself, Knightsbridge North Lawyers to be no longer acting as the Land Council's lawyers?

10 ---There may be an issue because – there may be an issue, and the issue would have been around the bookkeeping order of the financial recording, so it could very well have been that I was – but I certainly wanted – did believe that Nick shouldn't have been involved in the organisation.

Well, if I can assist, I'll just take you to Volume 16 page 322 which is the minutes of the board on 28 July, 2016. Do you see that?---Yes.

And you were in attendance at that meeting?---I was.

20 If you go over the page, point 7 is a motion, can you see that motion?---Yes.

Raymond Kelly states Nick Bakis – I think by that you mean Mr Petroulias, is that right?---Yes, I would have. Yes.

Said he was employed by the accountant and the motion is to remove Nick, the solicitor, from the Land Council as legal representative, and then in brackets, Knightsbridge North Lawyers?---That's correct. That's correct. Yeah.

30 So, is your recollection that you in fact – the content of your motion or the point of your objective of your motion was to have Knightsbridge North Lawyers removed as the Land Council solicitors?---No, I think that would probably be enough sufficient as it is.

And you've already given some evidence about the reason why you objected to Mr Petroulias being the solicitor for the Land Council.---Yes.

40 It was that you perceived there to be a conflict ?---Yes. Look, at some point during, from the election to, to that meeting I was made aware of, of a relationship, a personal relationship between Ms Bakis and Mr Petroulias. Whether or not that was true or not I, I wasn't aware but I made comment on the evening of the AGM and there, sorry, the general meeting prior to the AGM and they didn't dispute it so I was of the opinion that they were actually in a relationship so therefore that was a further complication to the conflict and so at least, at the very least one of them shouldn't be involved.

And did anyone say anything against your motion?---I don't believe anybody stood against the motion. Sorry, hang on. No, no. No, no. No,

no, there was, there was, there was clearly an objection by I think Mr Green and most, and probably Ms Dates as well.

What can you recall either of them saying?---Oh, they done a good job. They're going to do good things for us. Sorry.

Did they say anything objecting the nature of, sorry, did they say anything addressing the nature of your objection as to the conflict?---No, no, they didn't, no, other than that, you know, they done a good job.

10

In any event, your motion wasn't carried. Is that right?---No, that's right.

And instead votes were for keeping Knightsbridge as the solicitors?---The chair cast a vote, five to five with the chair casting a, the extra vote.

Mr Kelly, the next meeting that you attended was a board meeting on 5 August, 2016. Do you remember that?---Yes, I think so.

20 And do you remember that Mr Petroulias and Ms Bakis were in attendance at that meeting also?---They were.

Do you recall that at that meeting the proceedings against the Minister and the Registrar were discussed?---Yes.

Do you recall what was said about those proceedings?---Recall. I'm sorry, I'm just, I'm drawing a blank for a, for a second.

30 So I'll take Mr Kelly to volume 16, page 355. You can see that those are the typed minutes. They're referred to as the Amended Minutes of the Board Meeting of 5 August, 2016 and you can see that you're there as attending in the attendees.---Yes.

And if we go, please, to page 358, halfway down the page there's a reference to Knightsbridge North Lawyers, Knightsbridge Tax Accountants.---Yes.

And you will see there that it refers to the next court appearance and I take it that that is meant to refer to the proceedings against the Minister and the Registrar and the New South Wales Aboriginal Land Council. Is that right?---Yes.

40

Mr Kelly, the explanation there is quite lengthy and goes over the page. Do you see if you go over the next page it goes from that page over onto the next page as well. Perhaps if you could just scroll back up to where that discussion begins and have a read of that.---Ah hmm.

You'd agree with me wouldn't you, Mr Kelly – sorry, if we just pause there.

THE COMMISSIONER: Mr Kelly, if you just pause for a moment.---Yes.

MS CURTIN: Sorry, Mr Kelly.---Oh, sorry.

Just grasping the general tenor of this discussion, you'd agree with me, wouldn't you, that it's a very detailed explanation that's given there?---I'm, I'm perplexed. It's, I hadn't read anything this detailed about, from a Land Council in years.

10 And so can I take it from your answer that that level of detail wasn't provided by either Mr Petroulias or Ms Bakis at this meeting about the legal proceedings?---I wouldn't, no, I, I couldn't say that. What I'm, what I'm, what I'm pointing to is that the reporting against what is being said in the room is at a very, at a very in-depth level.

And - - -

THE COMMISSIONER: Sorry to interrupt.

20 MS CURTIN: Sorry.

THE COMMISSIONER: I think you're making a point about the form, if not the content of what you're seeing here.---Yeah, yeah.

And what in general terms is attracting your attention about it?---Just the structure of it. The level of detail that's within it.

30 I think you said it's not what you were accustomed to seeing in the minutes of the meeting, is that right?---Yes, yes. I would say that there was some aspects of the conversation that I recall, but I wouldn't say that I recall every point of this, every, every point of this report. Every point (not transcribable)

Ms Curtin, can we just scroll back up to the top of this document. I just want to have another look at the beginning of it.

THE WITNESS: I, I have a sneaky suspicion that there's something missing.

40 THE COMMISSIONER: What do you mean by that?---Both Warren Schillings and I left the meeting. I didn't want to stay in the same room as Nick. So that's not recorded here.

MS CURTIN: Sorry, Mr Kelly, but do you recall being there present when an update was - - -?---When he arrived?

Sorry?---When he arrived?

When Mr Petroulias arrived.---And, yes.

You were present then?---Yes.

But do you recall being present when this update was provided?---Don't think so.

Are you saying it wasn't provided at all or are you saying you simply weren't in the room?---I think I stepped out of the room.

10 Well, it says on the next page – sorry, page 360 – that “Ray and Warren left the room at 1.50”, which seems to suggest, given where that is written and recorded, that you left after the update was given.---It's not correct. It's not correct.

In any case, you can't recall hearing this level of detailed explanation as to - - -?---No. No, but I can assure you that the minute that I saw Nick with his follower I was up and out of there.

20 These minutes also record that the acting CEO position was discussed. ---Yes.

Mr Kelly, if I could actually take you to the handwritten minutes of this meeting. They're at volume 16, page 352. Do you recall - - -?---Sorry, what page?

Sorry.---Oh, sorry. Here we go.

It will come up before you on the screen.---Sorry.

30 Sorry, Mr Kelly.---Ah hmm.

These are the handwritten minutes of the meeting, the same meeting on the 5th of August.---Yes.

And just before I take you to where this is discussed, do you remember discussing the position of acting CEO and the process of finding someone to take that position?---I do.

40 And do you recall any names being discussed?---There were a number of names being discussed, and I can tell you off the top of my head who they were. Now, this is prior to, prior to a number of people applying for a position earlier. There were, we were communicating about one applicant who actually provided a written application. Her, a young girl by the name of Sophie Anna. There was mentioned of a gentleman named (not transcribable) Manton, mention of a gentleman named Greg Griffiths, and there's somebody else.

And do you recall who mentioned the name Greg Griffith?---I think Richard Green did.

Is it possible that Ms Dates mentioned Mr Griffith's name?---Highly possible.

I'll just take you to page 354. You'll see there on the first side of that page it says "Deb, get Greg Griffiths on the phone"?---Mmm hmm.

- 10 Does that suggest to you then that it was Ms Dates who suggested Mr Griffith?---No. No. Sorry, it wasn't. It was Richard Green who mentioned, he – Deb may have been going to get him on the phone.

Right, okay. And do you know who Mr Griffith is?---I do know Greg, yes.

Can you tell the Commissioner who he is?---He's a gentleman whose family has a long association with the Newcastle area but I think he lives in Gunnedah right now.

- 20 Does he have some kind of connection with Mr Green?---I understand that they're a part of a land claim with the Gomeroi Nation's Group.

Are you aware of what expertise Mr Griffith might have to take on the role of CEO of the Land Council?---No, I understood that he had some previous experience of working in the Land Council setting I think at Gunnedah.

Thank you.

- 30 THE COMMISSIONER: Ms Curtin, can I just interrupt for a moment?

MS CURTIN: Yes.

THE COMMISSIONER: It looks like we may not finish the evidence of Mr Kelly today but Mr Kelly, what's your position, are you from Newcastle?
---Yes, I am.

What's your availability tomorrow or does that create problems?---I hadn't planned on tomorrow, but - - -

- 40 Ms Curtin, how much longer do you think you might be? A while yet?

MS CURTIN: I'd like to say 15 minutes but I suspect, Commissioner, that it might be more like half an hour but I could do it in half an hour, perhaps less.

THE COMMISSIONER: Ms Nolan, do you have any idea how long you might be just on the basis of the evidence thus far?

MS NOLAN: I'm attempting to only take about half an hour with anything that's somewhat complex, so I suspect that's probably where I'll be sitting with this witness.

THE COMMISSIONER: Thank you. Okay. I need to ask Mr Petroulias, perhaps I'll ask Mr Petroulias how long?

MR PETROULIAS: Fifteen minutes maximum.

10 THE COMMISSIONER: It does look like we've got difficulty finishing today, doesn't it?

MS CURTIN: Yes, Commissioner.

THE COMMISSIONER: Now Mr Kelly, just so far as your position is concerned, if it would impose hardship on you as I understand it might, to come back tomorrow, but there was some other time during the course of this week that might better suit then I'm prepared to try and modify things so we can accommodate you, your position. Speak freely?---I think I may be
20 able to manage something else during the week, I've got some – I've got some appointments that I've got to keep tomorrow with students and the likes.

Are you able to say, subject to inquiry if you need to make an inquiry, what day might better suit?---If I could just confirm with my wife.

Yes, why don't you just step down and confirm and I think we might as well set the date now rather than push through to 4 o'clock at this stage.

30 MS CURTIN: Yes, thank you Commissioner.

MR PATTERSON: Commissioner, Mr Kelly will make himself available tomorrow morning.

THE COMMISSIONER: I see. Well Mr Kelly, I hope that doesn't cause any - - -?---No, we'll manage, Commissioner. Thank you.

You sure, are you sure about that?---Yeah.

40 All right. Well, I think I'll let you get underway on getting back to Newcastle. Now is 10 o'clock a suitable time or would you prefer a later time than that?---No, I think 10 o'clock is good.

Is it?---Mmm.

Thank you for your cooperation in that regard, and Mr Patterson, if it's okay by you, too.

MR PATTERSON: Yes, yes it is, Commissioner.

MS CURTIN: Commissioner, we may need to adjust the witness list somewhat in light of this arrangement.

THE COMMISSIONER: I see. Can that be done if we take Mr Kelly at 10 o'clock?

MS CURTIN: Yes.

10

THE COMMISSIONER: It can be done. All right. I think we should try and do that. Thank you Mr Kelly, you may step down and we'll see you tomorrow morning.

THE WITNESS STOOD DOWN

[3.50pm]

MR PATTERSON: May I be excused, Commissioner?

20

THE COMMISSIONER: Certainly, Mr Patterson.

MR PATTERSON: Thank you.

THE COMMISSIONER: Any other matters to be attended to?

MS CURTIN: No, Commissioner.

THE COMMISSIONER: Very well. I'll adjourn.

30

AT 3.51PM THE MATTER WAS ADJOURNED ACCORDINGLY

[3.51pm]